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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 1170

J. R. McLEOD,

Petitioner,

vs.

THE CITY OF JACKSON, MISSISSIPPI, A MUNICIPAL CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI AND BRIEF IN SUPPORT THEREOF.

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THE CITY OF JACKSON, MISSISSIPPI, A MUNICIPAL CORPORATION

PETITION FOR WRIT OF CERTIORARI

To the Honorable the Justices of the Supreme Court of the United States:

The above named petitioner respectfully petitions for a writ of certiorari to review a decision of the Supreme Court of the State of Mississippi (*The City of Jackson, Mississippi,* v. *J. R. McLeod,* 24 Sou. (2d) 319 Adv. Sheets), rendered on January 14, 1946. Such decision reversed a judgment of the Circuit Court of the First Judicial District of Hinds County, Mississippi, in favor of petitioner, the appellee in the Mississippi Supreme Court and rendered a final judgment in favor of the appellant, The City of Jackson, Mississippi.

SUMMARY STATEMENT OF THE MATTER INVOLVED

This case grows out of the discharge of the petitioner, a citizen of the United States and a resident of Jackson, Mississippi (R. 25, 132), from the police force of the City of Jackson, Mississippi, for the sole reason that the petitioner had expressed an intention of becoming a member of the American Federation of State, County and Municipal Employees. That organization is a labor union which expressly forbids its members who are employed as policemen from striking, threatening to strike, or from using any coercion or threats of coercion in the furtherance of improving their working conditions, and, indeed, does not even seek collective bargaining contracts covering the working conditions of policemen, but rather seeks to obtain benefits for its members by the presentation of statistical and economic data and argument to municipal authorities, and by direct appeal for public support (R. 149, 160, 170).[1]

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[1] Union's Exhibit "A" (letter of instructions to local unions) (R. 149) states in part as follows:

> "Your certificate as Local 713 has been issued with the understanding that you will not use the strike weapon. I want to make plain also that if your local should engage in a strike your charter will be removed automatically, for we cannot condone a strike by police officers."

Mr. Zander, International President of the Union, testified, without contradiction, as follows in respect to International policy (R. 160):

> "Collective bargaining, as generally thought of, does not have application in public service. We do not advocate the use of the usual collective bargaining procedures in public service. Our collective bargaining, if it could be so described, is the use of the legislative process and the use of our right to petition our government. It is not the use of the collective bargaining contract for that kind of the usual collective bargaining procedure. We bargain with public officers with whom we deal about the matters which they can decide within the limits of their authority and discretion. When we reach an agreement, instead of entering into a collective bargaining agreement with them, they issue a statement of policy from the employer,

The facts leading up to petitioner's discharge are briefly as follows:

A few days prior to June 19, 1944, petitioner together with approximately thirty-three fellow policemen requested permission from the Chief of Police of the City of Jackson to use the City Court Room, a public building, for the purpose of organizing a labor organization to be affiliated with the American Federation of State, County and Municipal Employees (R. 135-136). Permission was refused and these policemen were advised that unless they renounced their respective intentions to join the American Federation of State, County and Municipal Employees, or any other labor organization, by 12:00 o'clock noon, Monday, June 19, 1944, they would be discharged (R. 137). Neither petitioner nor any of the thirty-three other policemen associated with petitioner in the organizing of the labor union, renounced the intention of becoming a member of the union, and they

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setting forth those conditions arrived at that way, and it is therefore necessary for me to say that we do not attempt to apply collective bargaining as ordinarily defined and thought of, in our work."

The oath of applicants for membership in the Union is as follows (R. 170):

"I" —— —— giving the name of the applicant — "pledge my honor to observe faithfully the constitution and laws of this local of the American Federation of State, County and Municipal Employees and the rules and regulations for the government thereof; not to make public any of the private proceedings of this local; to perform faithfully all the duties assigned to me; to support the products and services of organized labor by making purchases of such products and services; to so conduct myself at all times as not to bring reproach upon my local; and at all times to bear true and faithful allegiance to the American Federation of State, County and Municipal Employees and to the labor movement in general.

"I solemnly promise that I shall do all in my power to exalt and promote the cause of government service, aid in efforts to develop a more understanding public attitude toward public employment, and develop on the part of the general public a conviction of the value of public service." (Emphasis supplied.)

were thereupon discharged from their employment (R. 20). (On the next day, June 20, 1944, the City Council, by ordinance, ratified and approved in all respects the action of the Chief of Police in discharging petitioner and his associates (R. 22).)

As an employee of the Police Department of the City of Jackson since July 16, 1936 (R. 28), petitioner enjoyed certain seniority rights under the provisions of Chapter 55, Mississippi Laws of 1930, as amended, and, in addition, under Chapter 20 of the Revised Ordinances of the City of Jackson of 1938, petitioner was entitled to participate in a Disability and Relief Fund to which he had contributed one percent (1%) of his monthly salary during the period he was an employee of the Police Department. Upon being discharged from the Police Department, he lost these seniority and pension rights (R. 28).

Following his discharge, petitioner asked for and was granted an independent hearing before the City Civil Service Commission as was his right under the Civil Service Act of Mississippi, Chapter 28, Laws of 1944. He there raised all the Federal questions involved in the present petition. The Civil Service Commission affirmed the discharge of petitioner (R. 2-6), whereupon the petitioner took an appeal to the Circuit Court of Hinds County as was also his right under the provisions of the Civil Service Act of 1944, and again raised all Federal questions (R. 6-13).

The Circuit Court affirmed the decision of the Commission. Petitioner then took an appeal to the Supreme Court of Mississippi, which reversed the judgment of the Circuit Court of Hinds County on the grounds that petitioner was entitled to a jury trial on the limited issue of whether the Commission had acted in good faith and for cause, and the case was remanded for a new trial before a jury in the Circuit Court of Hinds County. (*J. R. McLeod* v. *City of Jackson*, 21 S. (2d) 916-918.)

In the second trial in the Circuit Court of Hinds County, petitioner again raised the same Federal constitutional questions (R. 23-26). The jury found in favor of the petitioner and judgment was entered accordingly (R. 234). The City of Jackson then took an appeal from this judgment of the Circuit Court of Hinds County to the Supreme Court of the State. Petitioner again raised all Federal questions.[2] On this appeal the Supreme Court of Mississippi reversed the Circuit Court of Hinds County and held that, as a matter of law, the petitioner's expression of an intent to become a member of a labor union and his refusal to renounce that intention was an act tending to injure the public service, constituted insubordination and was good cause for dismissal (R. 241). (Regardless of whether the discharge was accomplished by the Police Chief, the Mayor or City Counsellors, the City Council, or the City Civil Service Commission, the Court specifically held that the discharge was the act of the City. *J. R. McLeod* v. *City of Jackson*, 21 S. (2d) 916). This decision ignored the Federal questions which had been raised, briefed and argued before it. A dissenting opinion was rendered, predicated in part upon the proposition that the discharge of petitioner violated his guarantees of freedom of speech, of peaceable assembly and petition under the Constitution of the United States (R. 252-253). The Supreme Court of Mississippi entered a judgment on January 14, 1946, reinstating the decision of the Civil Service Commission.

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[2] Under Mississippi practice petitioner, as respondent in the proceedings below could raise this question only in his brief and argument before the Supreme Court of Mississippi. See petitioner's brief therein, pp. 78-80, copies of which have been filed in conjunction with this petition for writ of certiorari. The Federal question was argued before the Court and discussed in the dissenting opinion of that Court (R. 252-3).

STATEMENT AS TO JURISDICTION

This case is of that character of which the court has jurisdiction under the provisions of the Act of Congress of February 13, 1935, Section 237-b, 28 U. S. C. A., Sec. 344-B.

This case is one in which the validity of the action of the City of Jackson under the Constitution of the United States was drawn in question upon the grounds that the action of the City of Jackson in discharging petitioner from his position in its Police Department and depriving him of his position, his seniority rights and his rights in a Disability and Benefit Fund, to which he had long contributed, violated petitioner's rights of peaceable assembly, of free speech, and to petition for redress of grievances, and denied him due process and the equal protection of the laws, all as guaranteed to him under the First and Fourteenth Amendments to the Constitution of the United States.

The case was finally disposed of by the Supreme Court of the State of Mississippi holding in favor of the validity of the action of the City of Jackson. Judgment against petitioner was entered by the Supreme Court of Mississippi on January 14, 1946 and every possible remedy within the State has been exhausted.

Petitioner drew into question at every step in the proceedings below the question of his rights to peaceable assembly, free speech, to petition for the redress of grievances, and to due process and the equal protection of the laws under the Federal Constitution. The majority opinion of the State Supreme Court ignored the federal questions brought before it; however, a dissenting opinion passed upon the federal questions raised by petitioner.

On April 3, 1946, an order was issued by Mr. Justice Black extending the time within which to file this petition for certiorari through April 30, 1946 (R. 255).

QUESTIONS PRESENTED

1. Does the action of the City of Jackson, in discharging petitioner from his employment as a police officer for the sole reason that such petitioner had signified an intention to become a member of a particular labor organization especially adapted to serve police officers, deprive petitioner of the rights of assembly, speech and petition guaranteed under the Bill of Rights and protected against infringement by the State under the Fourteenth Amendment, that is, can a municipality require the surrender of fundamental rights secured under the First Amendment as a condition of employment as a police officer?

2. Is such action of the City of Jackson, depriving petitioner as it does not only of his employment but of established seniority and pension rights, so unreasonable, arbitrary or discriminatory as to deprive petitioner of property rights without due process of law and to deny him equal protection of the law in contravention of the provisions of the Fourteenth Amendment?

REASONS RELIED ON FOR ALLOWANCE OF WRIT

Police officers employed by municipalities located throughout the forty-eight States have manifested an interest in joining, and many of them have joined, labor organizations, and in particular the Federation of State, County and Municipal Employees, as a means of achieving economic protection, security and advancement. The question of whether this class of municipal employee has the bare right to assemble with his fellow employees in a labor organization whose laws and procedures are especially adapted to serving the interests of police officers has been raised in numerous localities, and the contrariety of answers given to this question has given rise to much con-

fusion and to disturbances similar to the one involved in the present case. There is no decision by this Court on that precise issue. A determination by this Court will serve to settle an issue which has become exceedingly controversial and vexatious. Since the problem involves issues of federal constitutional law and there are asserted constitutional rights of the highest order, the matter is one which can be definitely determined only by this Court.

In the present case the City of Jackson, Mississippi, has attempted to require the surrender of fundamental rights as a condition of being continued in employment by such municipality. It is important to note that the proscription imposed by the City of Jackson and upheld by the Supreme Court of Mississippi goes to the bare right of a particular class of municipal employees, namely, police officers, to assemble together and associate with their fellow employees in a labor organization for purposes of mutual discussion and mutual aid; the proscription is an absolute one, having no regard for the character or nature of the particular organization with which petitioner desires to affiliate or for the nature or character of any particular acts that might or might not be committed by petitioner while a member of such organization.

As more fully discussed in the brief in support of this petition, this Court has indicated in many decisions that the free exercise of rights secured under the First Amendment as basic to our society is not to be prohibited or restrained by the State even for purposes of public convenience, and can only be subordinated if the exercise involves grave and immediate danger to public interests—a condition entirely lacking in the present case. *Thornhill* v. *Alabama*, 310 U. S. 88; *DeJonge* v. *Oregon*, 299 U. S. 353; *Thomas* v. *Collins*, 323 U. S. 516; *West Virginia* v. *Barnette*, 319 U. S. 624. That the right of employees to assemble into and join labor organizations is a concomitant of the right

of assembly, speech and petition has been established in decisions such as *Thomas* v. *Collins, supra; Hague* v. *C. I. O.*, 307 U. S. 496; *Herndon* v. *Lowry*, 301 U. S. 242; *DeJonge* v. *Oregon, supra.* That the State, even in its capacity as an employer, has not an untrammelled privilege to require the surrender of fundamental rights has been determined in such cases as *Allen* v. *Georgia*, 166 U. S. 138, at 140; *Snowden* v. *Hughes*, 321 U. S. 1; *People* v. *Crane*, 214 N. Y. 154, affirmed 239 U. S. 195. As these cases indicate, it is the right of free assemblage, speech and petition which is given explicit protection by the Federal Constitution and not the power of the government, State or Federal, to impose any condition whatsoever in respect to the conditions of employment of its employees.

In addition, constitutional rights of a less fundamental, although no less important status, are involved under this case. Petitioner has been deprived not only of his employment but of vested seniority rights and rights to benefit payments from a fund to which he has regularly contributed. Deprivation of those rights for a reason so palpably arbitrary and so obviously discriminatory as that advanced by the municipality in the present case deprive petitioner of property without due process of law under the rationale of such decisions as *Nebbia* v. *New York*, 291 U. S. 502; *Frost* v. *Corporation Commission*, 278 U. S. 515; *Borden's Farm Products* v. *Baldwin*, 283 U. S. 194.

The issues involved in this petition are of a substantial nature involving important constitutional questions under the First and Fourteenth Amendments. An adjudication of the issues in this case by this Court is necessary to set at rest many of the perplexing constitutional questions that have arisen because of widespread desires of police officers to associate together and assemble into labor organizations for purposes of mutual aid and protection

and efforts of various municipalities to frustrate those desires.

WHEREFORE, your petitioner prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Clerk of the Supreme Court of the State of Mississippi, commanding that Court to certify and send to this Court for review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case Numbered 35989 and entitled *"The City of Jackson, Mississippi,* v. *J. R. McLeod,"* and that the judgment of the Supreme Court of Mississippi may be reviewed by this Honorable Court and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem just and meet, and your petitioner will ever pray.

Respectfully submitted,

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